

REPRESENTATIVE FOR PETITIONER:

Gerold L. Stout, Attorney, Hoepfner, Wagner & Evans, LLP

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lutheran University Association	)	Petition No.:	64-004-06-2-8-00001
d/b/a Valparaiso University)		
)		
Petitioner,	)	Parcel:	01-090000884
)		
v.)		
)		
Porter County Property Tax	)	County:	Porter
Assessment Board of Appeals,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
Porter County Property Tax Assessment Board of Appeals

February 4, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the subject property is exempt from taxation pursuant to Ind. Code § 6-1.1-10-16.

PROCEDURAL HISTORY

2. Charley E. Gillispie, Vice-President, Lutheran University Association, Inc. (the University) filed an Application for Property Tax Exemption (Form 136) for real and personal property for the 2006 assessment year on May 5, 2006. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the request for exemption and finding the real property 81% taxable on August 31, 2006.
3. Pursuant to Ind. Code § 6-1.1-11-7, the University filed a Form 132 Petition for Review of Exemption on September 29, 2006, petitioning the Board to conduct an administrative review of the PTABOA determination.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on November 14, 2007, in Valparaiso, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Gerold L. Stout, Attorney, Hoepfner, Wagner & Evans, LLP

For the Respondent:¹

John R. Scott, Porter County Assessor,

¹ Susanna Villareal, Deputy County Assessor, Janine Chrisman, President, Porter County PTABOA, and Susan A. Larson, Center Township Assessor, were also present at the hearing.

6. The Petitioner presented the following exhibits without objection:

Petitioner Exhibit A – Ind. Code § 6-1.1-10-16,

Petitioner Exhibit B – *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850 (Ind. Tax Ct. 1990),

Petitioner Exhibit C – Letter from Susan Larson, the Center Township Assessor,

Petitioner Exhibit D – Property record card for the subject property.

7. The Respondent did not submit any exhibits.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 132 Petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Order Regarding Conduct of Exemption Hearing,

Board Exhibit D – Hearing sign in sheet.

9. The subject property is the real estate and personal property located at 822 Mound Street, Valparaiso, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2006, the Porter County PTABOA determined the land to be 81% taxable.² The Petitioner contends the property should be 100% non-taxable.

² The PTABOA did not make any determination as to improvements or personal property.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

15. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.

16. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).

18. Worthwhile activities or noble purpose alone is not enough for tax exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E. 2d 850, 854 (Ind. Tax Ct.1990)).

19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

Petitioner's Contentions

20. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16 and § 6-1.1-10-20.
21. The Petitioner presented the following testimony in regard to this issue:
- A. The Petitioner contends the property is exempt under Ind. Code § 6-1.1-10-16 (a) and § 6-1.1-10-20.³ *Stout argument; Petitioner Exhibit A.* The Petitioner argues that, pursuant to Ind. Code § 6-1.1-10-16 (a), a property is exempt if it is owned, occupied and used by a person for educational purposes. *Stout argument; Ind. Code § 6-1.1-10-16 (a).* Similarly, under Ind. Code § 6-1.1-10-20, property is exempt if it is owned by a college and used for the purposes of the institution. *Id.*
 - B. The Petitioner argues that the property is owned by Valparaiso University and a portion of the university's German Cultural Center and its related parking facilities is located on the parcel at issue. *Id.* Mr. Stout argues that the facility is used for educational purposes and for the housing of students. *Id.* Thus, the Petitioner argues, the property at issue is 100% exempt. *Id.*
 - C. In response to questioning, the Petitioner's counsel argued that no other entities used the facility or the property. *Stout argument.* According to Mr. Stout, the property is used exclusively by the University for educational purposes. *Id.*
 - D. Finally, the Petitioner admits that prior to 1999 there was a different structure on the property. *Stout argument; Petitioner Exhibit C.* The Petitioner, however, contends that in 1998 a permit was issued and the building was razed. *Id.*

³ The Petitioner also contends that the property is exempt under Ind. Code § 6-1.1-10-16(d). That provision, however, addresses property purchased for construction of a structure to be used for an exempt purpose. Because the German Cultural Center had already been constructed on the parcel, subsection d no longer applies.

Respondent's Contentions

22. The Respondent argues that in the past the parcel was only granted a partial exemption because the property contained a structure that was used as rental property. *Scott testimony*. According to the Respondent, however, the building that was previously located on the parcel has been removed and the German Cultural Center built. *Id.* Thus, the Respondent agrees, the property should be granted 100% tax exemption.⁴ *Id.*

SUMMARY OF FINAL DETERMINATION

23. The parties agree that the predominant use of the property is for educational purposes. The Board, therefore, finds that the real and personal property at issue in this appeal are 100% exempt.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

⁴ To the extent that the Respondent agrees with the Petitioner's contentions, we encourage the parties to settle matters prior to hearing.

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>